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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application of :

Thomas P. MURPHY, *et al.*

Serial No.: 09/735,446

Filed: December 13, 2001

For: SYSTEM AND METHOD FOR  
REMOTELY PROVIDING  
INCENTIVES TO PURCHASERS

) Confirmation No. 7890

) Examiner: Jeffrey D. Carlson

) Group Art Unit: 3622

**MAIL STOP APPEAL BRIEF - PATENTS**

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**SUBSTITUTE APPEAL BRIEF AND RESPONSE TO NOTIFICATION OF NON-  
COMPLIANT APPEAL BRIEF UNDER 37 C.F.R. 41.37**

In response to the Notification of Non-Compliant Appeal Brief dated September 22, 2006, Appellants enclose a substitute Appeal Brief in compliance with the requirements of 37 C.F.R. 41.37. Appellants respectfully request that the Appeal Brief be accepted and further that the Board of Patent Appeals and Interferences reconsider and withdraw the rejections of record, and allow the pending claims, which are attached hereto.

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This Substitute Appellant's Brief contains the following items, as required by 37 C.F.R. § 41.37:

- I. REAL PARTY IN INTEREST
- II. RELATED APPEALS AND INTERFERENCES
- III. STATUS OF CLAIMS
- IV. STATUS OF AMENDMENTS
- V. SUMMARY OF CLAIMED SUBJECT MATTER
- VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL
- VII. ARGUMENT
- VIII. CLAIMS APPENDIX
- IX. EVIDENCE APPENDIX
- X. RELATED PROCEEDINGS APPENDIX

**I. REAL PARTY IN INTEREST**

The appellants, Thomas P. Murphy and Stephen D. Baker and Howard I. Epstein, are the applicants in the above-identified patent application and have assigned their entire interest in U.S. Serial No. 09/735,446 ("the '446 Application") to AutoSavings Network, Inc., the real party in interest.<sup>1</sup>

**II. RELATED APPEALS AND INTERFERENCES**

The Appellants, the Appellants' legal representative, and the Assignee are not aware of any other appeals or interferences which will directly affect, be directly affected by, or have a bearing on the Board's decision in this Appeal.

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<sup>1</sup> The assignment was recorded on June 11, 2002, at reel 011370, frame 0948.

**III. STATUS OF CLAIMS**

Claims 1-28 are pending in the application and were finally rejected in a Final Office Action dated May 14, 2004. The final rejection of claims 1-28 is hereby appealed.

**IV. STATUS OF AMENDMENTS**

No claim amendments have been filed subsequent to the Final Office Action dated May 14, 2004.

**V. SUMMARY OF CLAIMED INVENTION**

The claims are generally directed to processing of data and determining, presenting, and delivering incentives to purchasers, typically in an online, interactive fashion. The invention as claimed, and as set forth in the specification and figures of the '446 Application, provides a system and method for effectively targeting incentives to purchasers. Further, the invention may enable potential purchasers to specify incentive parameters that would motivate them to make a purchase, and to let manufacturers or other incentive providers analyze collective data and create an incentive based on this information (**page 3, lines 5-9**). The present invention provides incentives to prospective purchasers via a computer network. For example, the invention may be implemented via a website accessible via the Internet (**page 3, lines 11-13**).

The website may include various modules including an existing incentives module, a current interactive incentives module, a past incentives module, a future incentives module and a personalized "my next" interactive incentive module. In one aspect of the invention the incentive provides a dynamic, interactive capability to afford value to the consumer on a mass-market basis or on a market segment basis, which ultimately is capable of segmenting to the individual consumer. In this embodiment of the invention, the website may appear as an extension of the

host's site, where the host is, for example, a manufacturer site, a dealer site or a financing site. In this instance, certain parts of the subject website might be brand-identified, such as the login function and the payment function. This would advantageously permit a consumer to have the perception of dealing with several different manufacturers while actually providing personal preference data to a single entity (**page 3, lines 14-20 and page 4, lines 1-4**)

After logging onto the system through a system administrator and searching for cars and incentives, a user identifies an incentive of interest. The user then registers for that incentive electronically or otherwise, such as via email registration. A certificate of registration for the incentive may be provided to the user directly (electronically or otherwise) or forwarded (electronically or otherwise) to a redemption location (**e.g., a car dealership**) (**page 4, line 13-18**). A manufacturer or other provider of incentives may monitor the number of users who register for a particular incentive along with other information (for example, the time period over which the registrations occur, the inventory available, known trends in upcoming sales, and other factors) to dynamically change the existing incentives. The dynamic change, for example, may increase a rebate to encourage more users to make a purchase of a particular product or decrease an existing incentive amount if greater response than anticipated was achieved with a higher rebate amount (**page 4, lines 19-20, and page 5, lines 1-5**). Another aspect of the invention relates to providing "interactive" incentives. Interactive incentives enable a user to register or commit to an incentive based on certain predetermined criteria (for example, a minimum acceptable rebate). Based on the number of users who commit to a particular incentive, or other factors, such as identified opt-in incentive value thresholds, etc., a manufacturer or other incentive provider may: decide to issue or not issue an incentive based on the response;

determine the amount of the incentive; determine minimum and maximum incentive values; determine the duration of the incentive program; determine the geographical region in which to offer the incentive; and/or take other desired action (**page 4, lines 16-19**).

The claimed invention, as set forth in the independent claims, is described and shown in the specification and Figures 1-60 of the '446 Application. Referring now to independent claim 1, a method for presenting one or more incentives offered by an offeror and related to associated goods or services to a user for viewing a remote terminal is provided. The method of claim 1 comprises storing in a storage device **102** at a central location **22**, incentive related information pertaining to one or more products or services, each associated with at least one incentive offer (**See at least FIG. 1, central program server 22, product/service and incentive database 102, and the corresponding description at p. 19, line 10 through p. 22, line 2**). The method also comprises establishing an electrical communication between the central location **22** and the remote terminal **24, 26, 28** (**See at least FIG. 1, central program server 22 and Internet connection to remote terminals 24, 26 and 28, and corresponding description at p. 19, lines 10-16**). The method also comprises determining at the central location **22** if the user of the remote terminal is a registered user, and if the user is not registered transmitting a user profile inquiry to the remote terminal **22, 24, 26** to be electronically completed by the user, the user transmitting the completed user profile to the central location where the user profile data is received and stored, thereafter the user being recognized as a registered user (**See at least FIG. 1, central program server 22, user profile data module 88 and user profile database 96, and corresponding description at p. 14, lines 9-13 implying structure for performing this step**). The method also comprises presenting to and viewing by the registered user at the remote

terminal information pertaining to goods or services associated with the one or more incentives and means for remotely selecting by the user a particular good or service, and presenting the user with information related to one or more incentives associated with the selected good or service **(See at least web page 100 of FIG. 2 displayed to users and enabling them to view information pertaining to goods or services associated with the one or more incentives and hyperlinked modules 101-119; also see description at p. 20, line 3-7).** The method also comprises, upon receiving information from the remote user relating to the parameters of a selected incentive, the central location generating at least one incentive data file, the incentive data file relating to the user selected incentive parameters and comprising a plurality of fields, including a redemption field, a user identification field, and an associated good or service identification field, the redemption amount field representing the value of the incentive offered to the user **(See at least description at line 17-22, FIGS. 3 and 5, and description at p. 26 lines 6-10).** The method also comprises transmitting from the central location to the user at the remote terminal a prompt for payment of a user fee associated with disbursement of a redeemable certificate related to the incentive data file, receiving at the central location information from the user sufficient to effect payment of the user fee, and disbursing from the central location the redeemable certificate for redemption by the user at a retail facility for acquiring possession of the desired good or service associated with the redeemable certificate **(See at least FIGS. 3 and 5 and description of fee transmittal and certificate disbursement at p. 27, lines 3-4).**

Regarding independent claim 7, a method in an online network-based system comprising at least one server at a central location accessible over the network via remote terminals and a storage device in communication with the server is provided. The method of claim 7 comprises

receiving at the central location electronic incentive information concerning incentive offers available from at least one offerer and storing in a storage device at the central location electronic incentive information pertaining to a group of incentives offered by one or more offerors (See at least FIG. 5, steps 242, 244 and 246 and description at p. 29, lines 3-9 and FIG. 1, incentive data/instruction input module 84 and product/service and incentive database 102). The method also comprises establishing an electrical communication between the central location and a remote terminal over the network and presenting information related to one more goods or services and information related to available incentive offers from the stored group of incentive offers (See at least FIG. 1, central program server 22 and Internet connection to remote terminals 24, 26 and 28, and corresponding description at p. 19, lines 10-16; also see web page GUI 100 of FIG. 2 displayed to users and enabling them to view information pertaining to goods or services associated with the one or more incentives and hyperlinked modules 101-119; also see description at p. 20, line 3-7). The method also comprises determining at the central location if the user is a registered user, and if the user is not registered transmitting a user profile inquiry to the remote terminal to be electronically completed by the user, the user transmitting the completed user profile to the central location where the user profile data is received and stored, thereafter the user being recognized as a registered user (See at least FIG. 1, central program server 22, user profile data module 88 and user profile database 96, and corresponding description at p. 14, lines 9-13). The method also comprises selecting by the user at the remote terminal a desired good or service and transmitting a request to the central location to receive information related to available incentives associated with the selected good or service (See at least web page 100 of FIG. 2 displayed to users and enabling them to view information pertaining to goods or services associated



**with the one or more incentives and hyperlinked modules 101-119; also see description at p. 20, line 3-7).** The method also comprises comparing at the central location predetermined incentive criteria with user input data to determine which if any of the group of incentives relates to the user selected good or service and whether any such incentive should be made available to the user and upon determining that the user qualifies for one or more incentives, presenting the one or more qualified incentives available to the user via the remote terminal **(See at least FIG. 4, steps 206, 208, 212 and 220 and corresponding description at p. 28, lines 7-16).** The method also comprises receiving a request from a user for a qualified incentive and transmitting to the user a prompt of payment of a user fee as a condition to receiving the selected incentive, and, upon receiving payment from the user, transmitting incentive information to enable the user to redeem the selected incentive **(See at least FIGS. 3 and 5, particularly steps 242, 244 and 246 of FIG. 5, and description of fee transmittal and certificate disbursement at p. 27, lines 3-4).** The method also comprises storing at the central location information about incentives viewed or selected by the user **(See at least FIG. 1, historical incentives access and selection database 100).**

Referring now to independent claim 13, an online system for presenting incentives over a distributed network, the incentives being presented over the distributed network to potential purchasers of goods or services associated with the incentives is provided. The system of claim 13 comprises a central location comprising at least one server **22** and having at least one processor and at least one database **96, 98, 100, 102**, the at least one database for storing data related to: incentives; products or services associated with the incentives; and user profile information, the central location server having a communication device for establishing an

electrical communication of the distributed network (**See at least FIG. 1 depicting configuration of central program server 22 storing the claimed information and in electrical communication with the Internet**). The central location further comprises an incentive determination module **80** adapted to compare incentive data and user input data to arrive at one or more incentives available to a remote user, the at least one processor being adapted to process the incentive determination module (**See at least interactive incentives program of FIG. 4 including program manager 80 and description at p. 28, lines 7-16**). The system also comprises a remote terminal **24, 26, 28** operated by a remote user and having a display and a data entry device, the remote terminal further having a communication device for establishing communication with the central location **22** over the distributed network **Internet**, the remote terminal displaying good or service information received from the central location and receiving remote user input via the data entry device in response to the displayed good or service information, the remote terminal transmitting to the central location incentive request information input by the user, the incentive determination module at the central location comparing the incentive request information received from the remote terminal with a predetermined set of incentive parameters to determine issuance or non-issuance of an incentive offer to the remote user (**See again at least FIGS. 1-5 for description of remote terminal operation, and description of interactive incentives program in which program manager may apply a rules-based program to analyze the user information, and determine whether or not to issue an incentive; also see block 208 of FIG. 4**).

Referring now to independent claim 18, an online system for presenting remote users with a user interface to create and submit custom incentives over a distributed network to a central location, the remote users being potential purchasers of goods or services associated with

the custom incentive is provide. The system of claim 18 comprises a central location comprising at least one server **22** and having at least one processor and at least one database for storing data related to one or more of the following: incentives; products or services associated with incentives; and user profile information, the central location server having a communication device for establishing an electrical communication over the distributed network (**See at least FIG. 1 depicting configuration of central program server 22 storing the claimed information and in electrical communication with the Internet**). The central location also comprises an incentive determination module **80** adapted to compare incentive data and user input data to arrive at one or more incentives available to a remote user **24, 26, 28** (**See at least interactive incentives program of FIG. 4 including program manager 80 and description at p. 28, lines 7-16**). The system also comprises a graphical user interface **web page 100** adapted to present incentive and good or service information to remote users and to facilitate the receipt of remote user input over the distributed network (**See at least interactive web page 100 of FIG. 2 adapted to present incentive information to remote users and to facilitate remote user input; also see description at p. 19, line 9 through p. 26, line 5**). The system further comprises a remote terminal **24, 26, 28** operated by a remote user and having a display and a data entry device **browser enabled device such as a computer or cell phone** for display and interaction with the graphical user interface **web page 100**, the remote terminal further having a communication device for establishing communication with the central location **22** over the distributed network **Internet**, the remote terminal displaying good or service information received from the central location (**See at least FIGS. 1-5 for description of remote terminal operation, and description of interactive incentives program in which program manages may apply a rules-based program to analyze the user information, block 208; also see**

**FIGS. 22 and 24-26 for more web-based GUI images).** The graphical user interface of the system has an incentive creation module for receiving desired incentive parameters from the remote user, the graphical user interface presenting the remote user with a number of customizable and variable fields for creating a desired incentive, the customizable and variable fields including one or more of the following: product type or model; incentive amount; product accessories or features required or refused by the user; and time period for delivery of product or service **(See at least FIG. 2, interactive incentive modules 104, 106 and 108 and description thereof at p. 22, lines 8-20).** The remote terminal **24, 26, 28** of the system transmits to the central location incentive data input by the remote user, whereby a custom incentive is submitted for acceptance to the central location **(See at least description at p. 24, line 19 through p. 25, line 14 describing submitting a desired custom incentive to a manufacturer for approval).**

Referring now to independent claim 23, in an online system having a central location comprising a server and database in communication with a remote terminal via a distributed network, a method for presenting a remote user with incentives for goods or services and receiving a financial commitment from the remote user to purchase a good or service associated with the presented incentive in conjunction with acceptance of the incentive offer is provided. The method of claim 23 comprises establishing an electrical communication between the remote terminal **24, 26, 28** and the central location **22** over the distributed network **Internet (See at least FIG. 1 describing system configuration and implying Internet based communication between central server and remote terminals; also see description at p. 19, lines 9-16).** The method also comprises presenting an incentive offer and an associated user fee by the central location to the remote terminal and displaying the received incentive offer and user fee at the remote terminal, the user inputting user fee payment data via the remote terminal in exchange for

receiving the offered incentive, and transmitting the user fee payment data to the central location **(See at least FIGS. 3 and 5 and description of fee transmittal and certificate disbursement at p. 27, lines 3-4; See also p. 27, lines 12-20 describing user fee in association with incentive offer)**. The method also comprises distributing the incentive associated with the incentive offer for redemption by the remote user upon purchase of the good or service associated with the incentive and incentive offer **(See at least step 248 of FIG. 5 and corresponding description at p. 29, lines 3-9)**.

Referring now to independent claim 26, in an online system having a central location comprising a server and database in communication with a remote terminal via a distributed network, a method for receiving a user-defined requested incentive for purchasing a good or service from a remote user and receiving a financial commitment from the remote user to purchase the good or service associated with the requested incentive is provided. The method comprises establishing an electrical communication between the remote terminal **24, 26, 28** and the central location **22** over the distributed network **Internet** **(See at least FIG. 1 describing system configuration and implying Internet based communication between central server and remote terminals; also see description at p. 19, lines 9-16)**. The method also comprises via the remote terminal presenting the user with a graphical user interface **web page 100** to facilitate creation of a user-defined incentive and presenting the user with a user fee associated with submission of the user-defined incentive and after creating the user-defined incentive, transmitting the user-defined incentive from the remote terminal to the central location along with payment data to consummate payment of the user fee associated with submission of the user-defined incentive **(See at least steps 42 and 44 of FIG. 8 for user inputting acceptable incentive parameters and program server receiving/storing user incentive information and**

**charging registration fee; see also FIG. 22 and 24-26 for more web-based GUI examples).**

The method also comprises accessing the user-defined incentive from the central location and determining acceptance or rejection of the requested incentive based at least in part on parameters associated with the user-defined incentive and transmitting notification of acceptance or rejection of the user-defined incentive to the remote user and, if accepted, distributing the incentive associated with the incentive offer for redemption by the remote user upon purchase of the good or service associated with the incentive and incentive offer, and, if rejected, voiding the user fee payment submitted with the user-defined incentive (See at least p. 30, lines 9-20 **describing user-defined incentives and flowchart of FIG. 8 highlighting steps of receiving and reviewing user-defined incentives; see also p. 27, lines 6-8 describing refund of registration fee for non-qualified users).**

Referring now to claim 15, and 20, though these claims are dependent from independent claims 13 and 18 respectively, they are substantially the same. In addition to incorporating the features of the claims from which they depend these claims provide that the incentive determination module **incentives program manager 80** stores user requested parameters and upon the database being updated with revised acceptable incentive parameters and upon the stored user requested parameters agreeing with the revised acceptable incentive parameters, notifying the user that the user requested incentive parameters are accepted. (See at least p. 40, lines 15-18 for description of storing user requested parameters; see also p. 8, line 20 to p. 9, line 5, stating that if a match is found, the website may immediately grant an incentive to the user. If a match is not found then the system will continuously update the search on a periodic basis — that is, after manufacturer/incentive provider updates —and notify the user in the event a match is subsequently made).

The claimed invention, as set forth in claims 2 and 8, and as described and shown in the specification and Figures 1-60 of the '446 Application, may be further defined to have a redeemable certificate disbursed to one of the remote terminal or a retail facility and disbursed in electronic form. **See, for example, Specification page 20, lines 16-18.**

The claimed invention, as set forth in claims 3 and 9, and as described and shown in the specification and Figures 1-60 of the '446 Application, may be further defined by the additional step of printing at the remote terminal the redeemable certificate for presentation to a retail facility. **See, for example, Specification page 27, lines 3-4.**

The claimed invention, as set forth in claims 4 and 10, and as described and shown in the specification and Figures 1-60 of the '446 Application, may be further defined to require that the user profile inquiry comprise username and email address. **See, for example, Specification page 37, lines 5-11.**

The claimed invention, as set forth in claims 5, 11, 24 and 27, and as described and shown in the specification and Figures 1-60 of the '446 Application, may be further defined by the additional step of reimbursing the user fee to the remote user upon purchase of the good or service by the offeror of the good or service. **See, for example, Specification page 26, line 6-page 27, line 20.**

The claimed invention, as set forth in claims 6, 12, 25, and 28, and as described and shown in the specification and Figures 1-60 of the '446 Application, may be further defined to require that the incentive is a rebate associated with the purchase of a vehicle and the vehicle manufacturer reimburses the user fee to the remote user upon purchase of a vehicle. **See, for example, Specification page 27, lines 15-20.**

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**VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

Appellants find error in each of the outstanding rejections and requests that each ground of rejection in the Final Office Action be reviewed. The rejections presented in the Final Office Action are as follows:

A. Claims 1-28 were rejected under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 6,330,543 to Kepecs ("Kepecs") in view of U.S. Patent No. 5,794,207 to Walker *et al* ("Walker *et al.*").

**VII. ARGUMENT**

Appellants respectfully traverse the art rejection applied against the claims now pending on appeal. As discussed below, the Examiner has not met the burden of proof in establishing the obviousness of the appealed claims. Applicants respectfully submit that the rejection ignores limitations recited in the claims and relies on art that neither discloses nor suggests, individually or collectively, to one skilled in the art the claimed invention.

**THE EXAMINER HAS FAILED TO ESTABLISH A PRIMA FACIE CASE OF OBVIOUSNESS**

To establish a prima facie case of obviousness, the Examiner must provide a basis for the proposed modification of the reference teachings to result in the claimed invention, and provide convincing rationale therefor. Stratoflex, Inc. v. Aeroquip Corp., 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); In re Warner, 379 F.2d 1011, 154 USPQ 173 (CCPA 1967). In the present case, the Examiner has failed to provide sufficient factual basis or rationale as to how features of the present invention as recited in claims 1-28 are taught or suggested in the applied art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 5 USPQ2d 1434 (Fed. Cir. 1988).



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**THE REJECTION IGNORES RECITED CLAIM LIMITATIONS WHICH  
DISTINGUISH THE CLAIMED INVENTION OVER THE APPLIED REFERENCES**

Each recited limitation must be considered in deciding the patentability of a claim against the prior art. No claim limitation, including one which is functional, can be ignored and all words in each claim must be considered in deciding the patentability of that claim against the prior art. See In re Oelrich, 666 F.2d 578, 212 USPQ 323 (CCPA 1981). If required to determine the scope of a recited term, the disclosure is to be used. Likewise, the plain language of the reference must be taken at face value. The rejection ignores recited features that distinguish the claimed invention over the applied references and ignores the plain meaning of the language of the applied reference. See In re Barr, 444 F.2d 588, 170 USPQ 330 (CCPA 1971). Also, recited features and limitations of the claims have not been considered in the rejection of the claims. See In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

**THE APPLIED REFERENCE FAILS TO DISCLOSE OR SUGGEST THE CLAIMED  
INVENTION**

In rejecting claims under 35 U.S.C. §103(a), the reason must be evidenced and supported by the teachings, suggestions or inferences in the prior art as a whole or knowledge generally available to the skilled artisan. Uniroyal, Inc. v. Rudkin-Wiley, 837 F.2d 1044, 5 USPQ2d 1434 (Fed. Cir. 1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 227 USPQ 657 (Fed. Cir. 1985); ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 221 USPQ 929 (Fed. Cir. 1984); In re Sernaker, 702 F.2d 989, 217 USPQ 1 (Fed. Cir. 1983). The fact that the prior art could be modified to look like the claimed invention does not make it obvious to do so. Rather, the modification is only obvious if the prior art teaches or the prior art teachings suggest its desirability. Whether or not it might have been within the skill of the

artisan to make the proposed modification is not the test. What is determinative is whether one skilled in the art of the invention, upon consideration of the applied reference, would have found it obvious to make the modification and arrive at the invention based on some motivation derived from the cited references. In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984), In re Deminski, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986), In re Laskowski, 871 F.2d 115, 10 USPQ2d 1397 (CAFC 1989). In determining obviousness, the inquiry is not whether each element existed in the prior art, but whether the prior art made obvious the invention as a whole for which patentability is claimed. Hartness Int'l, Inc. v. Simplimatic Eng'g Co., 819 F.2d 1100, 2 USPQ2d 1826 (Fed. Cir. 1987). The Examiner must give adequate consideration to the particular problems and solution addressed by the claimed invention. Northern Telecom, Inc. v. Datapoint Corp., 908 F.2d 931, 15 USPQ2d 1321 (Fed. Cir. 1990); In re Rothermel, 276 F.2d 393, 125 USPQ 328 (CCPA 1960).

### **Summary of Arguments**

#### **The rejection of Claims 1-28 under 35 U.S.C. §103(a) as Obvious over Kepecs in view of Walker et al. is Wrong.**

On page 2 of the Final Office Action, claims 1-28 are rejected under 35 U.S.C. §103(a) as unpatentable over Kepecs U.S. Patent No. 6,330,543 ("Kepecs") in view of Walker et al. U.S. Patent No. 5,794,207 ("Walker"). Applicants respectfully traverse these rejections for the reasons previously stated, and for the reasons set forth in more detail below.

#### **Claims 1, 7, 23 and 26**

The final Action alleges that that Kepecs and Walker "teach a centralized host which provides an online promotion (incentive) system, where users remotely log in and browse offers that are

targeted to them. The new user registration process [3: 1-8] is taken to meet part c) of claim 1; any user-submitted data during such a process is taken to be transmission of a user submitted profile. A user may “select” an offer online and then “redeem” the offer at a retail location which may include a discount at the time of purchase [2:23-34, 5:18-60, 11:4-30]. The final Action further alleges that “the communication from the central host to the POS detailing the qualification for discount/offer is taken to be disbursement of a redeemable electronic certificate.” Appellants respectfully disagree with the Examiner’s assessment of Kepecs.

Independent claims 1 and 23 recite in part:

*An online method for presenting one or more incentives offered by an offeror and relating to associated goods or services to a user for viewing at a remote terminal, the method comprising:...determining at the central location if the user of the remote terminal is a registered user, and if the user is not registered transmitting a user profile inquiry to the remote terminal to be electronically completed by the user, the user transmitting the completed user profile to the central location where the user profile data is received and stored...upon receiving information from the remote user relating to parameters of a selected incentive, the central location generating at least one incentive data file, the incentive data file...comprising a plurality of fields, including a redemption amount field...the redemption amount field representing the value of the incentive offered to the user; transmitting from the central location to the user at the remote terminal a prompt for payment of a user fee associated with disbursement of a redeemable certificate related to the incentive data file, receiving at the central location information from the user sufficient to effect payment of the user fee; and disbursing from the central location the redeemable certificate for redemption by the user at a retail facility for acquiring possession of the desired good or service associated with the redeemable certificate.*

Kepecs is directed to a method and system for distributing and redeeming electronic promotions to a consumer. In particular, the method of Kepecs involves redeeming discount offers to stores, such as supermarkets, by a customer using a loyalty card, or receiving targeted discounts tied to his or her microhistory of purchases. A discount administrator process (DAP) computer is connected to computers of the seller of the discounted goods, e.g., a retail store chain that typically employs electronic cash registers that record items sold, calculate sales totals, and

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print receipts. Thus, Kepecs discloses distribution and redemption of coupons, particularly in supermarket settings, and other stores. In addition, the incentive program of Kepecs is directed towards customers using loyalty cards, and that the incentives and discounts are based on the customer's history of purchases of related items.

In the rejection, the Examiner relies upon column 2, lines 23-34, column 5, lines 18-60 and column 11, lines 4-30 of Kepecs. However, these excerpts make no mention or provide any discussion directed to the claimed limitations of remotely viewing by a registered user, information pertaining to goods or services associated with one or more incentives, and means for remotely selecting by the user, a particular good or service. Moreover, Kepecs does not disclose not suggest the claim limitations of creating an incentive data file having a redemption amount field, "transmitting a prompt for payment of a user fee associated with disbursement of a redeemable certificate related to the incentive data file," "receiving at the central location information from the user sufficient to effect payment of the user fee," and "disbursing...the redeemable certificate for redemption by the user at a retail facility."

Walker is directed towards a bilateral buyer-driven commerce system which improves the ability of buyers to reach sellers capable of satisfying the buyers' purchasing needs and improves sellers' ability to identify interested buyers. The Walker system and method enables prospective buyers of goods or services to communicate a binding purchase offer to potential sellers, where buyers give an offer to a good or service, such as airline tickets, hotel rooms, rental cars, and await sellers to either accept their offer or refuse it, a good example is the Priceline.com system where a consumer may submit a purchase offer to an airline ticket to a particular destination to the server of Priceline.com which might viewed by the potential airlines in order to either accept the potential buyer's offer or refuse it.

In the Office Action, the Examiner further states that “it would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the customized promotion system of Kepecs with the ability for user-defined offer parameters, so that the users can take advantage of more appealing customized promotions.”

In traversing this rejection Appellant notes the following. First, the Examiner has apparently misunderstood Kepecs’ disclosure. Kepecs discloses a system and method for distributing and reconciling electronic promotions. The system and method illustrated in Kepecs, Fig. 1 and disclosed as containing “methods of distributing and redeeming electronic promotions”. Kepecs’ method system involves a method and system where “consumers can communicate with a Discount Administration Process Advertising Server (DAPAS) 14, by ordinary telephone 17 through the telephone system 16. The DAPAS 14 uses a Discount Administrator process (DAP) telephone server 15 as an interface to the telephone system 16. The DAPAS 14 may also interface with a direct-mail process 18 that informs consumers of available promotions by ordinary mail if the consumer provided an address to associate with their unique ID” (column 7, lines 10-18). In addition, and in reference to Figure 2, Kepecs discloses that “the store, e.g., a supermarket, typically operates with electronic cash registers 21 is often connected to a Universal Product Code (UPC) scanner 26 and/or an Automated Teller Machine (ATM) reader 27. The UPC scanner 26 identifies bar codes on the products to the cash register 21. The ATM reader 27 reads the magnetically encoded account number of a credit/debit/smart card that has been issued by a some financial institution, such as a bank, or a store-issued loyalty card, belonging to a consumer” (column 7, lines 48-59). It is apparent that Kepecs system and method is directed to redemptions of coupons, and that the users do not set parameters for a selected incentive. Appellant respectfully submits that the Examiner is incorrect.

Furthermore, Walker's apparatus and method comprises seller interface **300**, central controller **200**, and buyer interface **400**, where "A buyer logs on to central controller **200**, creates a conditional purchase offer (CPO) **100**, and then disconnects from the network. CPO **100** is made available to potential buyers by posting CPO **100** on the web page of a central controller **200**. Then seller responses **110** are transmitted electronically to central controller **200** which contacts the buyer to indicate that CPO **100** has been bound. Central controller **200** transfers credit card information to the seller as soon as CPO **100** is bound" (column 15, lines 48-58). As indicated in Figure 5, boxes **515** and **535**, the products of which the CPO is made to, include airline tickets, hotel rooms, rental cars, insurance, mortgage, and conditions such as flight times, car sizes and the like. A good example is the Priceline.com system where a consumer may submit a purchase offer for an airline ticket to a particular destination to the server of Priceline.com where the offer might be viewed by potential airlines who may accept the potential buyer's offer or refuse it. Therefore, Appellant respectfully submits that Walker does not disclose or suggest at least the claimed feature of "presenting to and viewing by the registered user at the remote terminal information pertaining to goods or services associated with the one or more incentives and means for remotely selecting by the user a particular good or service, and presenting the user with information related to one or more incentives associated with the selected good or service." To the contrary, Walker's method and apparatus allows potential buyers to set a price for goods, where the price information is accessible to a number of sellers (i.e. a mass of sellers, instead of an incentive to a particular item, where the buyer is in communication with the offeror of the incentive only).

Moreover, Kepecs does not disclose nor suggest the claim limitations of creating an incentive data file having a redemption amount field, “transmitting a prompt for payment of a user fee associated with disbursement of a redeemable certificate related to the incentive data file,” “receiving at the central location information from the user sufficient to effect payment of the user fee,” and “disbursing...the redeemable certificate for redemption by the user at a retail facility.” In addition, claim 26 includes the further limitation of “if rejected, voiding the user fee payment submitted with the user-defined incentive.” The Examiner does not cite to any portion of either Walker or Kepecs to find this limitation. At paragraph 3 of the Final Office Action the Examiner conclusively, without support, states that it would have been “obvious...to have charged users a fee...with the targeted offering of promotions and to have waived or refunded the fees if the users make purchases using the system.” The Examiner’s reliance on mere hindsight is improper and wholly unsupported by the references cited and the rejection based thereon should be overturned.

#### **Claims 5, 11, 24 and 27**

The Examiner has not pointed to any line number or page of the Kepecs reference that allegedly discloses the same limitations in claims 5, 11, 24 and 27. The Examiner does not address that the claims call for reimbursing the user fee to the remote user upon purchase. Appellants respectfully submit that the Examiner has failed to establish a case of obviousness, and respectfully request that the Board reconsider and reverse the rejection of these claims.

#### **Claims 6, 12, 25 and 28**

The Examiner has not pointed to any line number or page of the Kepecs reference that allegedly discloses the same limitations in claims 6, 12, 25 and 28. The Examiner does not address that the claims call for a rebate or that the manufacturer is to reimburse the user fee to the remote user upon purchase. Appellants respectfully submit that the Examiner has failed to establish a case of obviousness, and respectfully request that the Board reconsider and reverse the rejection.

### Claims 15 and 20

Claims 15 and 20 recite “*the incentive determination module stores user requested incentive parameters and upon the database being updated with revised acceptable incentive parameters and upon the stored user requested parameters agreeing with the revised acceptable incentive parameters, notifying the user that the user requested incentive parameters are accepted.*”

For these limitations, the Examiner relies upon column 22, lines 63-68, and column 3, lines 39-43 of Walker et al. However, these excerpts do not mention that “the user requested *incentive parameters* is used to update the database”, and that the *incentives* are used by users to purchase a product related to the incentive.

The portion from Walker et al. that the Examiner is relying upon to reject the claims above, is directed to a method and system for sellers not to be binding by the user’s conditional purchaser *offer* for a good or service, but not directed to an *incentive* that the user modified. In particular, the method of Walker et al. involves a seller making a counteroffer to a user’s offer. “Sellers respond to CPO 100 not by binding it, but by making a counteroffer with modified and/or additional conditions.”

### Claims 13 and 18



Claim 18 recites in part “An online system for presenting remote users with a user interface to *create and submit custom incentives...the system comprising: a central location...comprising an incentive determination module adapted to compare incentive data and user input data to arrive at one or more incentives available to a remote user ...the graphical user interface having an incentive creation module for receiving desired incentive parameters from the remote user, the graphical user interface presenting the remote user with a number of customizable and variable fields for creating a desired incentive, the customizable and variable fields including one or more of the following: product type or model; incentive amount; product accessories or features required or refused by the user; and time period for delivery of product or service; and the remote terminal transmitting to the central location incentive data input by the remote user, whereby a custom incentive is submitted for acceptance to the central location.*”

Neither Kepecs nor Walker discloses an online system adapted to allow users to “*create and submit custom incentives.*” The Examiner does not cite to any portion of either reference for this and the related limitations of: “*an incentive creation module for receiving desired incentive parameters from the remote user,*” “*presenting the remote user with a number of customizable and variable fields for creating a desired incentive,*” and “*transmitting to the central location incentive data input by the remote user, whereby a custom incentive is submitted for acceptance to the central location.*”

Claim 13 includes the limitations of an “incentive determination module adapted to compare incentive data and user input data to arrive at one or more incentives available to a remote user...and transmitting...incentive request information input by the user, the incentive determination module...comparing the incentive request information received...with a

predetermined set of incentive parameters to determine issuance or non-issuance of an incentive offer to the remote user.” As discussed above, these limitations are not disclosed nor suggested by Kepecs or Walker alone or in combination.

In view of the above, it is readily apparent that the present invention as recited in claims 1-28 includes features and limitations that are neither disclosed nor suggested in the applied art. The basis for the obviousness rejection therefore is not technically sound. Appellants, therefore respectfully request that the Board reverse this rejection.

Applicants believe that no charges are due in connection with this amendment. However, in the event Patent Office charges are due, please charge the undersigned’s Deposit Account No. 50-0206.

In view of the foregoing, Appellants respectfully request that the Board reverse the prior art rejections set forth in the Office Action, and allow all of the pending claims.

Respectfully submitted,

HUNTON & WILLIAMS

Date:

10/23/2006

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## **VIII. CLAIMS APPENDIX**

1. An online method for presenting one or more incentives offered by an offeror and relating to associated goods or services to a user for viewing at a remote terminal, the method comprising the steps of:

- a) storing in a storage device at a central location incentive related information pertaining to one or more products or services each associated with at least one incentive offer;
- b) establishing an electrical communication between the central location and the remote terminal;
- c) determining at the central location if the user of the remote terminal is a registered user, and if the user is not registered transmitting a user profile inquiry to the remote terminal to be electronically completed by the user, the user transmitting the completed user profile to the central location where the user profile data is received and stored, thereafter the user being recognized as a registered user;
- d) presenting to and viewing by the registered user at the remote terminal information pertaining to goods or services associated with the one or more incentives and means for remotely selecting by the user a particular good or service, and presenting the user with information related to one or more incentives associated with the selected good or service;
- (e) upon receiving information from the remote user relating to parameters of a selected incentive, the central location generating at least one incentive data file, the incentive data file relating to the user selected incentive parameters and comprising a plurality of fields, including a redemption amount field, a user identification field, and an associated good or service identification field, the redemption amount field representing the value of the incentive offered to the user;
- (f) transmitting from the central location to the user at the remote terminal a prompt for payment of a user fee associated with disbursement of a redeemable certificate related to the incentive data file, receiving at the central location information from the user sufficient to effect payment of the user fee; and

(g) disbursing from the central location the redeemable certificate for redemption by the user at a retail facility for acquiring possession of the desired good or service associated with the redeemable certificate.

2. The method of claim 1, wherein the redeemable certificate is disbursed to one of the remote terminal or a retail facility and is disbursed in electronic form.

3. The method of claim 1 further comprising the step of printing at the remote terminal the redeemable certificate for presentation to a retail facility.

4. The method of claim 1, wherein the user profile inquiry comprises username and email address.

5. The method of claim 1 further comprising the step of reimbursing the user fee to the remote user upon purchase of the good or service by the offeror of the good or service.

6. The method of claim 5, wherein the incentive is a rebate associated with the purchase of a vehicle and the vehicle manufacturer reimburses the user fee to the remote user upon purchase of a vehicle.

7. In an online system operated over a network, the network comprising at least one server at a central location accessible over the network via remote terminals, and a storage device in communication with the server, a method comprising the steps of:

a) receiving at the central location electronic incentive information concerning incentive offers available from at least one offeror;

b) storing in a storage device at the central location electronic incentive information pertaining to a group of incentives offered by one or more offerors;

c) establishing an electrical communication between the central location and a remote terminal over the network and presenting information related to one or more goods or services and information related to available incentive offers from the stored group of incentive offers;

d) determining at the central location if a user is a registered user, and if the user is not registered transmitting a user profile inquiry to the remote terminal to be electronically completed by the user, the user transmitting the completed user profile to the central location where the user profile data is received and stored, thereafter the user being recognized as a registered user;

- e) selecting by the user at the remote terminal a desired good or service and transmitting a request to the central location to receive information related to available incentives associated with the selected good or service;
- f) comparing at the central location predetermined incentive qualification criteria with user input data to determine which if any of the group of incentives relates to the user selected good or service and whether any such incentive should be made available to the user;
- g) upon determining that the user qualifies for one or more incentives, presenting the one or more qualified incentives available to the user via the remote terminal;
- h) receiving from the user a request for a qualified incentive;
- i) transmitting to the user a prompt for payment of a user fee as a condition to receiving the selected incentive, and, upon receiving payment from the user, transmitting incentive information to enable the user to redeem the selected incentive; and
- j) storing at the central location information about incentives viewed or selected by the user.

8. The method of claim 7, wherein the incentive information for redemption by the user is communicated to one of the remote terminal or a retail facility.

9. The method of claim 7 further comprising the step of printing at the remote terminal the redeemable certificate from the transmitted incentive information and presenting the redeemable certificate to a retail facility in conjunction with making a purchase.

10. The method of claim 7, wherein the user profile inquiry comprises username and email address.

11. The method of claim 7 further comprising the step of reimbursing the user fee to the remote user upon purchase of the good or service by the offeror of the good or service.

12. The method of claim 11, wherein the incentive is a rebate associated with the purchase of a vehicle and the vehicle manufacturer reimburses the user fee to the remote user upon purchase of a vehicle.

13. An online system for presenting incentives over a distributed network, the incentives being presented over the distributed network to potential purchasers of goods or services associated with the incentives, the system comprising:

a central location comprising at least one server and having at least one processor and at least one database, the at least one database for storing data related to: incentives; products or services associated with the incentives; and user profile information, the central location server having a communication device for establishing an electrical communication over the distributed network;

the central location further comprising an incentive determination module adapted to compare incentive data and user input data to arrive at one or more incentives available to a remote user, the at least one processor being adapted to process the incentive determination module; and

a remote terminal operated by a remote user and having a display and a data entry device, the remote terminal further having a communication device for establishing communication with the central location over the distributed network, the remote terminal displaying good or service information received from the central location and receiving remote user input via the data entry device in response to the displayed good or service information, the remote terminal transmitting to the central location incentive request information input by the user, the incentive determination module at the central location comparing the incentive request information received from the remote terminal with a predetermined set of incentive parameters to determine issuance or non-issuance of an incentive offer to the remote user.

14. The system of claim 13, wherein the incentive determination module substitutes incentive parameters from the database for user requested parameters and presents a modified incentive to the user for acceptance.

15. The system of claim 13, wherein the incentive determination module stores user requested incentive parameters and upon the database being updated with revised acceptable incentive parameters and upon the stored user requested parameters agreeing with the revised acceptable incentive parameters, notifying the user that the user requested incentive parameters are accepted.

16. The system of claim 13, wherein a user is presented with payment of a user fee as a condition of receiving a requested incentive.

17. The system of claim 16, wherein the offeror of the goods or services associated with a redeemed incentive reimburses the user the amount of the user fee or conveys like value.

18. An online system for presenting remote users with a user interface to create and submit custom incentives over a distributed network to a central location, the remote users being potential purchasers of goods or services associated with the custom incentives, the system comprising:

a central location comprising at least one server and having at least one processor and at least one database for storing data related to one or more of the following: incentives; products or services associated with incentives; and user profile information, the central location server having a communication device for establishing an electrical communication over the distributed network;

the central location further comprising an incentive determination module adapted to compare incentive data and user input data to arrive at one or more incentives available to a remote user;

a graphical user interface adapted to present incentive and good or service information to remote users and to facilitate the receipt of remote user input over the distributed network; and

a remote terminal operated by a remote user and having a display and a data entry device for display and interaction with the graphical user interface, the remote terminal further having a communication device for establishing communication with the central location over the distributed network, the remote terminal displaying good or service information received from the central location;

the graphical user interface having an incentive creation module for receiving desired incentive parameters from the remote user, the graphical user interface presenting the remote user with a number of customizable and variable fields for creating a desired incentive, the customizable and variable fields including one or more of the following: product type or model; incentive amount; product accessories or features required or refused by the user; and time period for delivery of product or service;

the remote terminal transmitting to the central location incentive data input by the remote user, whereby a custom incentive is submitted for acceptance to the central location.

19. The system of claim 18, wherein the incentive determination module substitutes incentive parameters from the database for user requested parameters and presents a modified incentive to the user for acceptance.

20. The system of claim 18, wherein the incentive determination module stores user requested incentive parameters and upon the database being updated with revised acceptable incentive parameters and upon the stored user requested parameters agreeing with the revised acceptable incentive parameters, notifying the user that the user requested incentive parameters are accepted.

21. The system of claim 18, wherein a user is presented with payment of a user fee as a condition of receiving a requested incentive.

22. The system of claim 21, wherein the offeror of the goods or services associated with a redeemed incentive reimburses the user the amount of the user fee or conveys like value.

23. In an online system having a central location comprising a server and database in communication with a remote terminal via a distributed network, a method for presenting a remote user with incentives for goods or services and receiving a financial commitment from the remote user to purchase a good or service associated with the presented incentive in conjunction with acceptance of the incentive offer, the method comprising the following steps:

- a) establishing an electrical communication between the remote terminal and the central location over the distributed network;
- b) presenting an incentive offer and an associated user fee by the central location to the remote terminal;
- c) displaying the received incentive offer and user fee at the remote terminal, the user inputting user fee payment data via the remote terminal in exchange for receiving the offered incentive;
- d) transmitting the user fee payment data to the central location; and
- e) distributing the incentive associated with the incentive offer for redemption by the remote user upon purchase of the good or service associated with the incentive and incentive offer.

24. The method of claim 23 further comprising the step of reimbursing the user fee to the remote user upon purchase of the good or service by the offeror of the good or service.

25. The method of claim 24 wherein the incentive is a rebate associated with the purchase of a vehicle and the vehicle manufacturer reimburses the user fee to the remote user.



26. In an online system having a central location comprising a server and database in communication with a remote terminal via a distributed network, a method for receiving a user-defined requested incentive for purchasing a good or service from a remote user and receiving a financial commitment from the remote user to purchase the good or service associated with the requested incentive, the method comprising the following steps:

- a) establishing an electrical communication between the remote terminal and the central location over the distributed network;
- b) via the remote terminal presenting the user with a graphical user interface to facilitate creation of a user-defined incentive and presenting the user with a user fee associated with submission of the user-defined incentive;
- c) after creating the user-defined incentive, transmitting the user-defined incentive from the remote terminal to the central location along with payment data to consummate payment of the user fee associated with submission of the user-defined incentive;
- d) accessing the user-defined incentive from the central location and determining acceptance or rejection of the requested incentive based at least in part on parameters associated with the user-defined incentive; and
- e) transmitting notification of acceptance or rejection of the user-defined incentive to the remote user and, if accepted, distributing the incentive associated with the incentive offer for redemption by the remote user upon purchase of the good or service associated with the incentive and incentive offer, and, if rejected, voiding the user fee payment submitted with the user-defined incentive.

27. The method of claim 26 further comprising the step of reimbursing the user fee to the remote user upon purchase of the good or service by the offeror of the good or service.

28. The method of claim 27 wherein the incentive is a rebate associated with the purchase of a vehicle and the vehicle manufacturer reimburses the user fee to the remote user.

**IX. EVIDENCE APPENDIX**

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**X. RELATED PROCEEDINGS APPENDIX**

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